No. 08-397

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BENISTAR LTD., BENISTAR EMPLOYER SERVICES TRUST CORPORATION, BENISTAR ADMIN SERVICES, INC., DANIEL CARPENTER, MOLLY CARPENTER, and CARPENTER FINANCIAL GROUP, LLC,

Petitioners,

v.

GAIL A. CAHALY, JEFFREY M. JOHNSTON, BELLEMORE ASSOCIATES, LLC, MASSACHUSETTS LUMBER COMPANY, INC., JOSEPH IANTOSCA, INDIVIDUALLY AND AS TRUSTEE OF THE FAXON HEIGHTS APARTMENTS REALTY TRUST AND FERN REALTY TRUST, and BELRIDGE CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Benistar Ltd., Benistar Employer Services Trust Corporation, Benistar Admin Services, Inc., and Carpenter Financial Group, LLC, state that the corporate disclosure statement included in the petition remains accurate.

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REPLY FOR PETITIONERS

In what can only be described as a desperate attempt to maintain a judgment that is both unconscionable as well as unconstitutional, plaintiffs' opposition sacrifices the truth, misrepresents the facts, distorts the opinions rendered by the Massachusetts courts, and mis-states the clear-cut law laid down by this Court regarding personal jurisdiction that every first year law student must learn.[1] "The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books . . . American courts invalidated, or denied recognition to, judgments that violated this common-law principle long before the Fourteenth Amendment was adopted." *Burnham v. Superior Court of California*, 495 U.S. 604, 608-09 (1990). The cornerstone of American constitutional law regarding personal jurisdiction is that no defendant should be "haled" into a foreign state's court, *see World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), unless it "purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). However, the Benistar defendants (Delaware and

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1. For example, there was no "Ponzi scheme." Opp. 5. Instead, Benistar Property Exchange ("BPE") invested and lost $8.6 million of plaintiffs' funds due solely to the actions of PaineWebber, which explains why BPE subsequently obtained a $14.2 million judgment against PaineWebber. *See* Pet. App. 85a-86a. Nor has BPE chairman Daniel Carpenter been convicted of a crime in relation to these events. Opp. 1. Plaintiffs also fail to mention that in June 2008 they received $12.5 million from BPE, thereby making them whole (and then some) on their $8.6 million in losses.

Connecticut citizens) were haled into Massachusetts courts although neither the Massachusetts long-arm statute nor the Due Process Clause were satisfied, when in Massachusetts jurisdiction over nonresidents is proper only when the requirements of *both* the long-arm statute and due process principles have been met. *See Miller v. Miller*, 861 N.E.2d 393, 400 (Mass. 2007) ("Once the [long-arm] statute has been satisfied, the constitutional requirements of due process also must be met.").

Plaintiffs simply ignore these ancient and fundamental principles, and instead assert that it was proper for a Massachusetts court to use Massachusetts law to pierce the veils of Delaware corporations that were domiciled in Connecticut in order to exert personal jurisdiction over them in Massachusetts.[2] *See* Opp. 3-4. Plaintiffs' counsel even signed a detailed written stipulation stating that these Delaware corporations domiciled in Connecticut had nothing to do with the plaintiffs or Massachusetts, and that the elements of

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2. One of these Delaware corporations (Benistar Admin Services, Inc.) has been 100% owned by an Employee Stock Ownership Plan ("ESOP") since 1999, before the events giving rise to this case occurred. *See* SJC App. 3141-42. Thus, piercing the veil of this particular corporation in order to exert personal jurisdiction over it is particularly troublesome because Daniel and Molly Carpenter have never been and are not participants in the ESOP, and therefore are not owners of that particular Connecticut-based Delaware corporation by any stretch of the judicial imagination. *Id.* Moreover, the veil piercing claims were tried to the bench, but Massachusetts law requires that such claims be tried to a jury. *See, e.g., Crane v. Green & Friedman Baking Co., Inc.*, 134 F.3d 17, 22 (1st Cir. 1998) (citing cases).

the Massachusetts long-arm statute were not satisfied as to these defendants. *See* Pet. App. 87a-90a. The Massachusetts courts ignored all of this and relegated petitioners' due process rights to a couple of lines in each opinion. *See, e.g.*, Pet. App. 51a. This cavalier treatment of the due process rights of nonresidents by the Massachusetts courts should not be countenanced because it will lead to utter chaos in determining jurisdiction in the future for foreign companies and persons *not* doing business in, or having sufficient minimum contacts with, Massachusetts (or any other State).

Plaintiffs claim that the writ should be denied primarily because the Benistar defendants seek "review of the factual determinations of the state court decision below." Opp. 1. This claim is plainly wrong for two reasons. First, the relevant facts in this case are undisputed. *See* Pet. 4. Second, the Massachusetts courts determined that personal jurisdiction existed over *all* of the Benistar defendants without (i) deciding first whether the elements of the Massachusetts long-arm statute had been satisfied as to each defendant individually, and (ii) then conducting the "minimum contacts" analysis required by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny for each individual defendant.[3] Instead, the Supreme Judicial Court of Massachusetts ("SJC") relied solely on the discredited and constitutionally untested theory of "jurisdictional veil piercing," where the forum contacts

3. Thus, plaintiffs' attempt (without any citation or support) to differentiate among which of the Benistar defendants are entitled to seek the writ should be disregarded. *See* Opp. 1 n.1.

of one defendant are imputed—based exclusively on state law doctrines of corporate disregard—to other defendants. Given that both federal and state courts are hopelessly confused on this issue, as lamented by numerous commentators as recently as 2008, *see* Pet. 15-29, this Court's review plainly is in order.

I. Petitioners Seek Review Of The SJC's Jurisdictional Framework, Not Its Factual Determinations.

The Benistar defendants do not challenge the "facts" found by the Massachusetts courts.[4] Rather, assuming those facts are true, the Benistar defendants claim that the Due Process Clause was clearly violated in this case because the SJC failed to apply those facts to determine whether the Massachusetts long-arm statute was satisfied and whether there were sufficient "minimum contacts" or meaningful "contacts, ties, or relations," *International Shoe*, 326 U.S. at 319, with Massachusetts in order to support the exercise of personal jurisdiction over the Benistar defendants. *See Hernandez v. New*

4. The key jurisdictional "facts" (found exclusively by drawing adverse inferences) relied upon by the state court to exercise jurisdiction over the Benistar defendants boil down to the following: (1) Daniel Carpenter had "active control" over BPE, *see* Opp. 7; (2) Molly Carpenter was an officer of BPE and signed BPE's corporate resolutions (albeit in Connecticut), *see* Opp. 8; and (3) there was a similarity of officers between Benistar Ltd. and other petitioners. *See* Opp. 9. Jurisdiction over the remaining Benistar defendants was found to exist even though plaintiffs' counsel executed a stipulation that the elements of the long-arm statute were not satisfied as to these petitioners. *See* Pet. App. 87a-90a. These are the "facts" upon which the Massachusetts courts exercised personal jurisdiction over Delaware and Connecticut citizens.

York, 500 U.S. 352, 366 (1991) ("we would defer to state-court factual findings, even when those findings relate to a constitutional issue."). Plaintiffs' opposition is completely silent on this matter, and with good reason, because the Massachusetts courts, in a case of first impression in Massachusetts, discarded over 60 years of this Court's precedents in order to adopt a jurisdictional framework that finds no support in any prior decision of the SJC, let alone this Court.[5] Instead, plaintiffs attempt to portray as a "factual dispute" a case in which personal jurisdiction was found to exist over nonresident defendants when there was no analysis: (1) under the Massachusetts long-arm statute; (2) under the Due Process Clause; (3) of the requirements for general or specific jurisdiction, *see Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984) (personal jurisdiction may be either specific or general); and (4) of whether there was purposeful availment and a determination that the exercise of jurisdiction was reasonable. *See World-Wide Volkswagen Corp.*, 444 U.S. at 291-92.[6]

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5. Even the Massachusetts trial court, in its decision ignoring the dictates of *International Shoe*, stated: "Case law makes clear that when personal jurisdiction is claimed on such a ground [veil piercing], the inquiry into personal jurisdiction and the merits inquiry into whether there is an appropriate case for corporate disregard are very linked." SJC App. 3140. While no decision of the SJC or this Court was cited in support of the trial court's dictum, several lower federal and state court decisions were cited—clear proof of the total confusion on this issue that exists throughout the federal and state courts.

6. The SJC was required to undertake the well-worn jurisdictional analysis that is axiomatic in the federal courts. (Cont'd)

In over 50 pages of its decision in this case, *see* Pet App. 1a-52a, not once did the SJC even cite to *International Shoe*. And in the Massachusetts Appeals Court's 23-page opinion, *see* Pet. App. 53a-76a, *International Shoe* was cited to only once, *see* Pet. App. 65a, and only with respect to Daniel and Molly Carpenter. As to the remainder of the Benistar defendants, the Appeals Court held that "plaintiffs' theory of personal jurisdiction was necessarily intertwined with the merits of their claim that corporate disregard was appropriate in this case." Pet. App. 66a. Thus, in over 70 pages of written opinions by two Massachusetts appellate courts, jurisdiction was found to exist over several nonresident defendants without any citation to or analysis under *International Shoe*, and jurisdiction was found to exist over the remaining two petitioners based only on a single, fleeting reference to this Court's controlling case on the subject (but with no analysis thereunder). This alone is reason enough for this Court not only to grant the writ, but to reverse and vacate the judgment below in a summary disposition on the merits pursuant to Rule 16.1.[7]

(Cont'd)

See, e.g., Hannon v. Beard, 524 F.3d 275, 279-86 (1st Cir. 2008), *petition for cert. filed*, 77 U.S.L.W. 3130 (U.S. Sep. 4, 2008) (No. 08-326) (conducting full due process analysis); *Phillips Exeter Academy v. Phillips*, 196 F.3d 284, 291 (1st Cir. 1999) (finding no jurisdiction where the breach of fiduciary duty occurred outside the forum).

7. Even if this Court were to reverse and vacate the judgment below, plaintiffs would still retain the $12.5 million they received from BPE in June 2008 on their $8.6 million loss because BPE is *not* a petitioner.

II. There Is A Clear And Undeniable Conflict Among The Federal And State Courts On The Issue Of Jurisdictional Veil Piercing.

Plaintiffs' assertion that the federal and state courts "have *uniformly* held that the state law doctrine of piercing the corporate veil may properly play a role" in determining jurisdiction, *see* Opp. 18 (emphasis added), is contradicted not only by the existing case law but by numerous commentators. *See, e.g.*, Daniel G. Brown, Comment, *Jurisdiction Over a Corporation on the Basis of the Contacts of an Affiliated Corporation: Do You Have to Pierce the Corporate Veil?*, 61 U. CIN. L. REV. 595, 601 (1992) ("The current case law on the topic of jurisdiction over affiliated corporations is disjointed and inexplicit at best."); *see also id.* at 618 ("The confusion in the courts is understandable. A single court has sometimes reached different conclusions on the issue in cases falling within months of each other."). Brown suggests that "[i]n light of the confusion among the courts concerning the authority of states to exercise jurisdiction over corporations on the basis of the activities of affiliated corporations, the United States Supreme Court should resolve the issue." *Id.* Professor Miller, in the same section of his famous treatise cited by plaintiffs, *see* Opp. 19, identifies numerous federal and state cases falling on both sides of the issue. *Compare* 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1069.4, nn.2-8 (3d ed. 2002), with *id.* at nn.10-17.

Notwithstanding this Court's directive that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International*

Shoe and its progeny," *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977), Professor Miller has identified several exceptions to this general rule. However, the concept of jurisdictional veil piercing is not one of them. *See* 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1067.3 (3d ed. 2002). Professor Miller goes on to state that the cited passage from *Shaffer*:

> applies only to cases in which process is served beyond the territory of the forum state, since that is the situation addressed in each of the Court's decisions in the *International Shoe* line of cases, which, according to Justice Scalia's opinion, technically and literally speaking, was what the *Shaffer* Court was considering when the quoted passage was authored.

Id. (referring to Justice Scalia's opinion for the Court in *Burnham*).

It is undisputed that all of the Benistar defendants, who are citizens of Delaware and Connecticut, were served with process in this Massachusetts action at their Connecticut residences. *See, e.g.*, SJC App. 26-27. Thus, the SJC was without constitutional authority to create a new exception to this Court's decisions in the *International Shoe* and *Shaffer* line of cases by exercising personal jurisdiction over the Benistar defendants *solely* through the use of jurisdictional veil piercing.[8]

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8. Describing *International Shoe* and its progeny as an "unbroken line of cases . . . which unequivocally establish the minimum contacts, fair play, and substantial justice doctrine as

(Cont'd)

III. This Case Is An Ideal Vehicle To Clarify The *Cannon* Doctrine.

Plaintiffs' final argument in opposition is that the petition fails to address an important issue. *See* Opp. 20-22. Aside from the obvious due process issues raised in the petition, another important question of federal law that has not been, but should be, settled by this Court, *see* Rule 10(c), has to do with the viability and applicability of this Court's seminal decision in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925). *See also* Pet. 18-19, 26. The petition poses the issue regarding *Cannon* as follows:

> *Cannon* strongly suggests that the corporate form cannot be disregarded for purposes of asserting jurisdiction, even under circumstances of complete domination that might justify veil piercing under the law of many States, so long as the separate corporate existence is "not pure fiction." *Cannon* fits uneasily at best, however, into this Court's modern jurisprudence of personal jurisdiction.

Pet. 19.

(Cont'd)

the controlling constitutional standard," 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1073 (3d ed. 2002), Professor Miller states that "further refinements and new developments should be expected both in the Supreme Court and in the lower federal courts, as well as the state courts." *Id.* However, Professor Miller would be hard-pressed to have envisioned the SJC's decision here, where the "controlling constitutional standard" was completely ignored.

According to Professors Swain and Aguilar:

> *Cannon* stands for the proposition that, as long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in the forum state may not be considered in determining jurisdiction over the other. Indeed, because the Court maintained the separate identity of the two notwithstanding the complete dominion and control of the parent over the subsidiary, some courts have viewed *Cannon* as imposing an even higher standard than traditional veil piercing doctrine.

John A. Swain & Edwin E. Aguilar, *Piercing the Veil to Assert Personal Jurisdiction Over Corporate Affiliates: An Empirical Study of the Cannon Doctrine*, 84 B.U. L. REV. 445, 455-56 (2004). Thus, notwithstanding that the Massachusetts courts found that "the actions of the corporations consisted of the actions of the Carpenters and of Benistar," Opp. 11, the SJC was required under *Cannon* to do more than just simply apply Massachusetts veil piercing law to exert personal jurisdiction over Delaware and Connecticut citizens. *See, e.g., PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 174 (Tex. 2007) ("Courts have acknowledged that jurisdictional veil-piercing and substantive veil-piercing involve different elements of proof.") (citing cases).

Although *Cannon* pre-dated *International Shoe*, which "may also have overruled *Cannon* by implication," Swain & Aguilar, 84 B.U. L. REV. at 456, "*Cannon* is

still cited with amazing frequency." *Id.* Professors Swain and Aguilar, after conducting an extensive empirical analysis, concluded that "the *Cannon* doctrine is as strong a precedent today as it was the day after it was decided." *Id.* at 483. However, they also observe that "[b]ecause of its limited scope, it has never been controlling." *Id.* This case is an ideal vehicle with which to resolve the important federal issue regarding whether *Cannon* truly retains its vitality.

The facts in this case are undisputed and the record is simple. And those facts and record present the paradigm of the situation on which the federal and state courts are in stark conflict: Can a court ignore the controlling constitutional standard under the *International Shoe* and *Shaffer* line of cases, and exert personal jurisdiction over nonresident defendants *solely* by attributing one defendant's forum contacts to another through state law concepts of veil piercing?

CONCLUSION

For the foregoing reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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